

Item SPR06-20 Response Form

Title: Small Claims Motion Procedure (adopt Cal. Rules of Court, rule 1707)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-20

Title	Small Claims Motion Procedure (adopt Cal. Rules of Court, rule 1707)
Summary	Proposed rule 1707 of the California Rules of Court would provide a uniform procedure for (1) giving notice of a request for a court order and (2) deciding the request before and after the small claims trial.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>The Small Claims Act identifies many motions that may be made by a party either before or after the small claims trial. The act may be silent on the procedure to be followed for giving notice of the motion, whether there is an opportunity to respond, and whether the court must conduct a hearing before ruling on the motion. As a result, some small claims forms developed by the Judicial Council have filled in gaps with procedure not necessarily articulated in the act or the California Rules of Court. Procedure may also not be consistent from form to form. This issue came to light while the advisory committee was revising the current Judicial Council small claims motion forms into a plain-language format.</p> <p>When reviewing these forms, the committee discovered that some forms provide procedures on which the act or the California Rules of Court is silent. The responsibility for serving notice of the motion, the opportunity to respond before the court rules on the motion, and whether a hearing is required on the motion are not always spelled out for a particular motion.</p> <p>To further small claims policies identified in the act of providing a judicial forum accessible to all parties directly involved in the dispute and to resolve motions “expeditiously, inexpensively, and fairly,”¹ the committee conducted an extensive review of all motions authorized under the act, categorized their procedures, and developed a proposed rule of court that would apply consistently to all small claims motions filed before and after trial.² The rule would be adopted under Judicial Council authority to develop small claims practice and procedure consistent with the Small Claims Act. (See Code Civ. Proc., § 116.920.)</p>

¹ Code Civ. Proc., § 116.120(b).

² A list of all pre- and posttrial motions identified in the act is attached at page 4.

Pretrial motions. Pretrial motions would require the requesting party to mail or personally deliver notice of the motion to the other parties, and the other parties must be given an opportunity to answer or respond to the request before or at the small claims hearing. The upcoming small claims trial gives the court an opportunity to hear all grievances, thereby providing a procedural safety net.

Posttrial motions. Motions made after notice of entry of judgment must be mailed by the clerk to provide an extra measure of assurance that notice of the motion is given to all parties. At this stage of the proceedings, a losing party may try to change the outcome of the trial. Because there is no longer an opportunity to contest the request at an upcoming trial, the court must allow at least 10 days for a written response to be filed before ruling on the request.

The court can decide whether a hearing is necessary to fairly resolve the matter. However, a hearing is required on a plaintiff's motion to vacate the judgment if the plaintiff did not appear at the hearing. (See Code Civ. Proc., § 116.720.) This requirement has been incorporated in proposed rule 1707. There are two motions in the act that reference a hearing, but these hearings appear to be at the discretion of the court and are not, therefore, mandatory.³

If adopted, the rule would provide a uniform procedural framework for the plain-language request for court order forms, incorporating notice requirements in instructional prompts that will help self-represented parties understand the process.⁴

The proposed rule is attached at page 3.

Attachments

³ Discretionary hearings mentioned in the act include (1) the defendant's request to vacate the judgment for lack of appearance (Code Civ. Proc. § 116.730) and (2) defendant's request to vacate the judgment for improper service (Code Civ. Proc., § 116.740).

⁴ The plain-language forms that are the subject of a separate invitation to comment incorporate the procedures of this proposed rule.

Rule 1707 of the California Rules of Court would be adopted, effective January 1, 2007, to read:

Rule 1707. Request for court order

(a) [Request before trial] If a party files a written request for a court order before the hearing on the claim, the requesting party must mail or personally deliver a copy to all other parties in the case. The other parties must be given an opportunity to answer or respond to the request before or at the hearing. This subdivision does not apply to a request to postpone the hearing date if the plaintiff's claim has not been served.

(b) [Request after trial] If a party files a written request for a court order after notice of entry of judgment, the clerk must mail a copy of the request to all other parties in the action. A party has 10 days from the date that the clerk mailed the request to file a response before the court makes an order. The court may schedule a hearing on the request, except that if the request is to vacate the judgment for lack of appearance by the plaintiff, the court must hold a hearing.

Small Claims Motions Identified in the Small Claims Act

Pretrial Motions

1. CCP 116.130(h) A written request to the court for an order, such as a letter.
2. CCP 116.370 Venue or court location challenge.
(Defendant shall mail a copy to other parties; defendant does not have to appear at the *hearing*.)
3. Rule 1704 Venue challenge procedure.
(Defendant not required to appear at *hearing* on venue challenge.)
4. CCP 116.390 Transfer claim to limited jurisdiction court.
(Defendant shall cause a copy to be personally delivered.)
5. CCP 116.560 Request to amend claim to correct defendant's name.
6. CCP 116.570 Request to postpone hearing date.
(Requesting party shall mail or personally deliver.)

Posttrial Motions

1. CCP 116.130(h) A written request to the court for an order, such as a letter.
2. CCP 116.560 Request to amend judgment to correct defendant's name.
3. CCP 116.620 Motion for installment payments.
(Notice by clerk to all affected persons.)
4. CCP 116.630 Motion to amend party's name.
(Notice by clerk to all affected persons.)
5. CCP 116.710 Defendant motion to vacate judgment—defendant did not appear.
(Follow CCP 116.730 or 116.740.)
6. CCP 116.720 Plaintiff motion to vacate judgment.
(Motion within 30 days after clerk mails notice of entry; “the clerk shall schedule *the hearing* no earlier than 10 days after the clerk has mailed written notice of the date, time, and place of the hearing to all parties.”)
7. CCP 116.725 Motion to correct clerical error or based on wrong law.
(Motion within 30 days after clerk mails notice of entry.)
8. CCP 116.730 Defendant motion to vacate judgment—defendant did not appear.
(Motion within 30 days after clerk mails notice of entry; “defendant shall appear at *any hearing* on the motion.”)
9. CCP 116.740 Defendant motion to vacate judgment for improper service.
(Motion within 180 days after discovery; “court *may order* enforcement of judgment suspended pending a *hearing* and determination of the motion.”)
10. CCP 116.850 Request of judgment debtor to enter satisfaction of judgment.
(Clerk shall enter if debtor establishes rebuttable presumption.)
11. CCP 116.860 Request to make payment to the court.
(Clerk shall notify judgment creditor when judgment satisfied.)